IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2729 of 2007

Prakash G. Kachhara Applicant

Vs.

The State of Maharashtra & anr. Respondents

Mr.P.S.Jain for applicant.

Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 21, 2007.

P.C.

. Heard Mr.Jain, the learned counsel for the applicant. This is an application seeking leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai in CC No.510/SS/2006. The complaint was filed under Section 138 of the Negotiable Instruments Act, 1881. The cheque dated 4/1/2006 for an amount of Rs.2,54,600/- was dishonoured and there is no dispute that the accused had drawn the said cheque in favour of the complainant i.e. the present applicant. However, the learned Metropolitan Magistrate on assessment of the evidence and more particularly the

document at Exhibit 10 which is a letter and the Promissory note, recorded a finding that the cheque at Exhibit 11 was not issued for enforcement of debt or legal liability. The learned Magistrate recorded a finding that the cheque was given by way of security in view of the terms and conditions set out in the Promissory note. The trial Court in detail dealt with the contents of the letter at Exhibit 10 as well as the Promissory note in para 4 of its judgment. The Promissory note copy was placed before me and having regards to the contents therein, it is clear that the cheque was issued for security purposes and in case of failure to repay the loan on or before 4/1/2006 the said loan was to be repaid by the family members of the accused jointly and severally. The last paragraph of the said Promissory note reads as under:

> "In the event I fail and neglect to repay the said loan towards the abovesaid terms and conditions, Shri Prakash G. Kachhara shall be at liberty to recover the said from me and my family members by attaching my moveable and immovable property."

. I am, therefore, satisfied that the reasoning set out by the trial Court in support of the order of acquittal does not call for reconsideration at the hands of this Court and hence leave to appeal is hereby refused. Application is rejected accordingly.

(B.H.MARL